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THE RIGHTS OF NEUTRAL COUNTRIES SO FAR AS CONTRABAND AND CONDITIONALLY CONTRABAND ARTICLES ARE CONCERNED.

There has been running through the Solicitors' Journal and Weekly Reporter, London, during September and October, so far, a continued article under the caption, "Prize Law," which is quite interesting as regards the right of seizure of articles destined to belligerent nations.

In it is much consideration of what is called the Declaration of London, 1909, which was made by the Second Peace Congress, to which, however, Great Britain has never fully assented, but claims the right of a belligerent to a free hand in declaring what shall be deemed what is absolute and what conditional contraband so far as exports from a neutral country to an opposing belligerent is concerned.

As the law of such a case it quotes from Lord Stowell in the case of The Maria, 1799, 1 Ch. Rob. 340, regarding the duty of a British prize court as follows:

"Not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference that justice which the law of nations holds out without distinction to independent states, some happening to be neutral and some to be belligerent. The seat of judicial authority is indeed locally here, in the belligerent country, according to the known law and practice of nations, but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question if sitting at Stockholm; to assert no pretensions on the part of Great Britain which he would not allow to Sweden in the same circumstances; and to impose no duties on Sweden as a neutral country which he would not admit to belong to Great Britain in the same character."

This was said in a case where Swedish vessels were carrying conditional contraband to ports of nations with which Great Britain was at war, the vessels being under convoy of a Swedish frigate. The ships were seized for resistance of visit and search by British cruisers and were, by the judgment, condemned.

Lord Stowell said, citing Puffendorf, whom he classed as a Swedish jurist: "The right of visiting and searching merchant ships upon the high seas, whatever the ships be, is an incontestible right of the lawfully commissioned cruisers of a belligerent nation, and from this right there results necessarily the right to capture."

The Journal remarks upon this that: "It is obvious that this statement of the law is founded on the interests of belligerent nations rather than of neutrals . . . but as a general principle it is less easy of approval, notwithstanding the almost unanimous voice of international lawyers in its favor."

It appears, at all events, that there has not been any declaration of the Hague Conference, which has been accepted by nations to qualify in any way what is stated to be "an incontestable right" by belligerent nations, but there seems to be distinctions observed, as a matter of grace, between articles contraband and those conditionally contraband, though there be no blockade of the ports of a belligerent. Blockade would seem to have no effect on the question, but it is resorted to only to facilitate capture.

Each belligerent, therefore, would seem to have the right under international law to say what is contraband and what conditionally contraband, according to the nature of articles and whether destined for an enemy government or the civil population thereof. And this principle seems to be well applied when traders or merchants of a neutral country are the shippers or the neutral country itself is the shipper. In-

deed, the law on this subject considers as wholly negligible any distinction of this nature, as merchantmen carry the property of individuals and merchantmen are subject to the prize laws of a belligerent.

While thus each belligerent may have no right to exact of the subjects of neutral countries that they shall do nothing to aid another belligerent, whether as to furnishing it munitions of war or supplies for its inhabitants, yet these subjects take the risk of capture.

Therefore, it becomes of interest to such subjects to learn what particular belligerents may regard as contraband and what conditionally contraband, and what may be shipped by way of neutral countries, so as not to be subject to capture. The right to seize articles as contraband implies full power to draw the line between them and what is otherwise, and to inquire into the *bona fides* of any consignment. It would seem that no neutral country has any claim to object to seizure of any article merely because in a continuous voyage transhipment is to be from its port to final destination.

Upon the whole we gather that the right to declare what is contraband implies the right to mitigate the rule of contraband only by way of grace. And this applies as well to shipments to armed forces as to the civil population of another belligerent.

The comprehensive duty of a neutral state is "to do nothing which will aid one belligerent to the injury of the other," and it is in the discretion of each belligerent to define the limits of this rule. Respect for the interests of neutrals, and not for their rights, and policy of belligerents among themselves may enlarge the conditional contraband list or the absolutely free list, in shipments from neutral countries, but at bottom it should be remembered, that a belligerent has the right to abate from this neutral duty, under penalty of capture only, of whatever is forbidden to subjects of any neutral nation. In other words, there seems to be no *casus belli* in the subjects of a neutral nation injuring a belligerent in shipments to another belligerent.

NOTES OF IMPORTANT DECISIONS

WORKMENS' COMPENSATION ACT — RIGHT OF EMPLOYER TO SUE THIRD PERSON FOR NEGLIGENCE CAUSING INJURY TO SERVANT.—The rule that there is no right for which there is no remedy receives discussion in a case where an employer sued a third person for injury caused by him to an employe to whom he became liable for injury in the course of service. Interstate Tel. & Tel. Co. v. Pub. Service El. Co., 90 Atl. 1062.

By reason of this injury the employer had to spend money for hospital services and to pay 50 per cent of employee's wages for four or five weeks. The employer sued the third person for this amount.

The court in affirming a judgment in favor of defendant said: "The right to the statutory compensation is a part of the compensation of the employe for services rendered, for which the employer receives a *quid pro quo*. If it were not so, the employer would cease to employ. The compensation is no more a loss to him than other wages paid for work done, and it is none the less compensation for labor done because the statute directs that its payment shall be distributed over a certain number of weeks in the future. It is one of the necesary expenses of the business against which the employer must protect himself by a higher price for his product or have regular wages for his product or lower regular wages for his employes."

This reasoning seems to lack something of force, because whatever is the fact about its being calculated against is no concern of the third person, his violation of duty being just as evident as were it not provided against. The provision is something in favor of the employee and not for the benefit of the third person.

At all events, though generally speaking, this loss is absorbed, yet if it would not happened but for the fault of a third person, the amount saved would go to employer's profit.

NEGLIGENCE—PROXIMATE CAUSE OF LOSS FOR FAILURE TO KEEP BURGLAR ALARM IN ORDER.—The facts in the case of Nirdlinger v. American Dist. Telegraph Co., 91 Atl. 883, decided by Pennsylvania Supreme Court, shows failure of a burglar alarm company to keep in order apparatus to notify of entry into unoccupied dwelling house, its

entry by a burglar and the theft of articles therefrom. The company agreed to keep the alarm system in order and to dispatch an officer to the premises in case of entry.

The court held in this case, that the felonious entry should be deemed the proximate cause of the loss. The court after defining proximate cause to exist where the original cause of loss is by continuous succession of events, in which the first becomes naturally linked to the last and to be its cause. But if the chain of events is so broken that facts become independent of each other, the first cause cannot be said to be the proximate cause. It then says that where an independent human agency intervenes as the next antecedent cause of the loss, the original cause is lost sight of.

We greatly doubt this reasoning, because the human agency contemplated in this case is not to be regarded an independent cause. It was merely a physical fact in plain contemplation of the contracting parties. It was the opening of a door or window, whether by human will or by storm, exposing the contents of the house to loss, that the alarm company was to prevent. The opening of a door or window that would give the alarm was what was agreed to put the company in motion to protect the premises, whether that opening be by the wilful act of another or otherwise. The company told its customer that upon such occurrence it would make every endeavor to save him from loss.

By calling the burglar's act in opening a door or window an intervening human agency it in effect says there is no liability at all, notwithstanding that it was this very thing the company said would not result in loss, if it reasonably could prevent the loss.

RECENT DECISIONS IN THE BRITISH COURTS.—THE LAW OF PRIZE.

We think we will be consulting the wishes of our readers if we refer this month to the decisions of the British prize court, which has been set up and is weekly deciding points of great international and mercantile importance.

In the case of *The Chile*, a German sailing ship, which was seized in the port of Cardiff on the day following the declaration of war, the owners of the ship instructed counsel to appear for them in the prize court, and on their rising to address the court the president (Sir Samuel Evans) asked: "By what right do the owners, who are alien enemies, appear in this court?" and he quoted the rule of the common law: "No man can sue in a British court who is a subject of the enemy, unless under particular circumstances that *pro hac vice* discharge him from the character of an enemy, such as coming under a flag of truce, a cartel, a pass or some other act of public authority that puts him in the king's peace *pro hac vice*." The result was that he threw out the affidavit which had been lodged on behalf of the German owners, as it did not contain averments grounding their right to appear notwithstanding their character of enemy. The applicants, however, were allowed to amend their affidavit and what they will probably do will be to base their right to appear on Articles 1 and 2 of Convention VI of The Hague Conference, 1907, which provided for mutual days of grace for ships that happened to be in belligerent ports at the outbreak of hostilities. Both Britain and Germany were parties to these articles. But in the course of the argument the attorney general stated that the British government could get no satisfactory information that the German government had given days of grace to British ships which had been in German ports at the beginning of the war, and he argued that it would not be right for the British government to release corresponding German ships if Germany detained their ships. In these circumstances the court, on the suggestion of the attorney general, who stated that the British government wished to act in letter and spirit in accordance with the Hague Conventions, did not condemn *The Chile* and order her sale, but declared that she had been properly seized and ordered her to be detained till the further orders of the court. This leaves the way open provided the enemy is so disposed for an exchange of the vessel for some British ship which had been captured at the outbreak of hostilities.

In another case, *The Perkeo*, Article 3 of the same Hague Convention was referred to, which provides that "enemy merchant ships which left the last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities may not be confiscated; they are merely liable to be detained on condition that they are restored after the war without payment of compensation. After touching at a port in their own country, or at a neutral port, such ships are subject to the laws and customs of naval war." *The Perkeo* was transferred from the British to the German flag immediately before leaving New York on July 14, for Hamburg, and she was captured off Dover on August 5, the day following the dec-

laration of war. She was therefore just the ship contemplated by Article 3 of the convention referred to, but the prize court refused to give her the benefit of the exception there provided for, because the German empire had refused to concur in Article 3. The condemnation, appraisal and sale of the ship was therefore ordered.

These cases show how careful the British authorities are to observe internaticnal good faith. The prize courts are only bound to administer British law, these Hague Conventions are not strictly speaking, law at all but they are receiving recognition just as if they were part of British law, provided they had been agreed to by both our own and the German governments. Thus the Hague Conventions are being elevated to the status of a sort of international contract. We have not yet heard how the German prize court is viewing them.

The Marie Glaiser was a German merchant vessel captured at sea, and condemned as a lawful prize. Thereafter a claim was made on behalf of a Dutch company who held a mortgage over the ship that a sufficient sum out of the proceeds of sale of the prize be set aside to satisfy their mortgage, on the plea that they were neutrals, and were entitled to have their interests protected. On that claim the prize court found—we quote the concluding sentence of their opinion—"that upon the authorities, upon principle and upon grounds of convenience and practice, the claim of the neutral mortgagees of this captured vessel must be rejected." The idea at the root of the claim of the mortgagees was borrowed by way of analogy from the ruling of the Declaration of Paris, that neutral goods, except contraband of war, are not liable to confiscation under the enemy's flag. Their mortgage they argued was "neutral goods," and if the precedents were against them on that point, they boldly urged the court to extend the common law, so as to bring it into harmony, on this question of the position of neutral mortgagees, with the Declaration of Paris. To this the answer of the court was that the Declaration of Paris deals only with goods or merchandise carried on vessels and its object is to secure the maintenance of maritime commerce, whereas the lending of money upon vessels or financing their owners were business transactions of a quite different kind. "There does not appear to be any direct relation in principle between guarding the safety of commerce upon its course across the oceans in the common interest of nations and giving protection to persons or companies who invest their moneys in shipping ventures."

Having thus disposed of the arguments based on the Declaration of Paris, the court in arriving at the judgment mentioned, pointed out that they were following the decisions of the British prize courts in the Napoleonic wars, the French courts in the Franco-Prussian war, the United States in the Spanish-American war, and the Japanese courts in the Russo-Japanese war. In our view, the careful and exhaustive judgment in the case of the Marie Glaiser may be taken as settling finally the position of the neutral mortgagee's interest in a captured ship. The reasoning of the prize court is so well supported by authority and precedent that if an appeal is taken the Privy Council, will to a practical certainty leave the decision undisturbed. The case, it will be observed, concerned a neutral. Had the mortgagee been a German or Austrian subject, there would of course have been no question, but his mortgage fell to be confiscated. And even though the mortgagee was a British subject, his interest would it is thought, not be protected, for in the case of the Tobago (1804) the claimant was a British subject who held a bottomry bond, and Lord Stowell in rejecting his claim said that those lending money on such a security take it subject to all the chances incident to it, amongst the rest the chances of war. Now a mortgage on a ship ranks after a bond of bottomry and *a fortiori* the same ruling should apply to it.

DONALD MACKAY.

Glasgow, Scotland.

WORKMEN'S COMPENSATION LAWS.

The rapid development along the lines of organized industry in this country during the past twenty years, has been productive of many problems related to social welfare. Conspicuous among these is the one involving provision for adequate compensation to the injured workman, in the case of industrial accidents. The idea is not a new one amongst civilized nations. As early as 1838, Prussia recognized the justice of the principle of workmen's compensation (as it has now come to be known) in the case of hazardous industries—this being about the time that railroads were introduced in that

country. In 1885, a more elaborate and extensive system of social insurance for the protection of the industrial worker, in case of accident or sickness, was adopted by the German empire; and since that date, laws with the same purpose in view have become part of the institutions of practically all European countries.

On this side of the water, interest in the subject has been awakened only within the past ten years or so; and only within the past four years has public sentiment crystallized into remedial legislation. Among us the advocate of workmen's compensation laws was at first regarded as a socialist, an estimate which has, however, disappeared as the intrinsic justice and economic importance of this kind of legislation have become apparent. And to-day we find the conservative business element not only offering no substantial opposition to the movement but, in many quarters, lending active assistance toward the adoption of these laws. In 1910, after an elaborate investigation of the subject, New York enacted a workmen's compensation law of limited scope. This statute, however, was declared unconstitutional by the Court of Appeals of that state, in the celebrated Ives case. Whilst in its infancy, here, the movement received a severe set back, this adverse decision doubtless had a beneficial effect, by stimulating a wider interest in the movement and a more careful consideration of the problem itself. At any rate, since that decision was rendered, some twenty-four states have adopted workmen's compensation laws. Most of these have been devised so as to circumvent the constitutional objections raised in the New York decision; but in a few cases the state constitutions, themselves, have been amended so as to render these objections nugatory.

The adoption of this character of legislation by half the states of the country, and the fact that some fifteen of the remaining states are at work on the preparation of such laws, is convincing evidence that the idea has taken root in our own institutions.

Employers' Liability Statutes.—To have a clear idea of the philosophy of workmen's compensation one must understand the essentials and results of the old system, for which it is now becoming a substitute.

At the time that Prussia was adopting the principle of a workman's absolute right to compensation in the case of occupational injuries, the courts of England and America took a step in the opposite direction by limiting the scope of an employer's liability. About 1840 these courts adopted the doctrines of assumption of risks and fellow servant, which were doubtless suggested by the industrial conditions which then prevailed. These conditions were simple and comparatively safe. The risks of the employment were not great. Industrial establishments were conducted on a very limited scale; the workmen were brought in constant contact with each other, and hence were more apt than the employer, to be familiar with each other's idiosyncracies.

The fifty years succeeding the pronouncement of these doctrines, however, wrought considerable change in industrial conditions. Machinery displaced hand labor to a great extent. Thus the operative became exposed to greater hazard in his work. The individual establishment became much larger, more operatives were employed in it, and these were distributed over numerous departments. It thus became increasingly difficult for one to guard against the negligence of fellow servants. In the light of such changed conditions the "employer's defences" as formulated half a century before, became unjust and unreasonable. Judicial decisions did not, however, modify them to meet the changing order, and so it was sought to do away with them by stat-

utory enactment. These enactments became known as "Employer's Liability Statutes," and are the forerunners of the present workmen's compensation laws. The first of the employer's liability statutes, applying to all trades, was passed by England in 1880, and shortly thereafter statutes modelled upon the English act were passed by several states in this country. Experience under these statutes, however, has demonstrated that even they do not work satisfactorily under present conditions, and that they have been a fruitful source of litigation and economic waste.

One of the features of the employer's liability law, is that while it modifies or abolishes the employer's defenses of assumption of risks and fellow-servant, it still requires, as a prerequisite to recovery of damages, the proof of personal negligence on the part of someone (other than a fellow workman) as the proximate cause of injury. Furthermore, it leaves the amount of damages to the speculation of a jury. In the present complex and highly developed state of organized industry, the proof of negligence on the part of some person for whom the employer is responsible, presents a very difficult task for the injured workman, particularly in view of the limited means at his command. The involved machinery of a modern industrial establishment makes it exceedingly difficult for an expert, even when investigating under the most favorable conditions, to determine the responsible cause of a particular accident. It can readily be appreciated, then, under what handicap the workman must be in proving his case, when, after the injury, the doors are closed to investigation by him. The doubt which thus surrounds the essential basis of liability, in the great number of cases, coupled with the added doubt as to the amount of damages likely to be awarded, furnishes a capital inducement to litigation. Litigation means loss and waste alike to the workman and his employer. On the one hand the delays awaiting trials and pending appeals prevent relief in the time of the workman's greatest need; on the other, both the preparation for trial and the trial of the case, itself, interrupt the employer's business. On both sides the lawyer's fees, court costs and other expenses entail a heavy and unnecessary expense. Besides these economic considerations, there is ever present the inducement for exaggeration and perjury, arising from the self-interest of the parties—on the one side to establish liability, on the other, to escape it. Apart from the moral aspect of such a situation, it necessarily closes the doors to scientific investigation of accident causation and prevention. And in addition to these many evils there inevitably arises a feeling of hostility between the employer and employe; a feeling which is not restricted to the case in hand, but sympathetically extends to other workmen in the employer's establishment.

Workmen's Compensation Laws—The workmen's compensation law effectually strikes at the root of these many troubles by eliminating the question of fault and by substantially diminishing the uncertainty as to the amount of damages in the particular case. It meets the situation in a practical, business-like fashion, eliminating waste, restricting the field of dispute, and at the same time insuring to the operative the prompt payment of reasonable compensation during his period of disability. It primarily recognizes the fact, that, in the complex conditions of modern industry, the question of personal fault is not the fair determinative factor of liability. Accidents are inevitable, and in a great number of cases cannot be shown to be referable to substantial fault on the part of anyone. They should therefore be treated as subjects of indemnity rather than as subjects of tort liability.

The two essential features of a workmen's compensation act are: The indemnity for injuries is payable without regard to fault; and the amount of the indemnity is based directly upon the workman's earning capacity. The test of the workman's right to indemnity is simply and solely, did the accident arise "out of and in the course of the employment." The scope of the law is intended to comprehend all accidents which may be properly classified as *occupational* injuries, and none others; and as a rule, it makes the remedy given by the act the *sole* and *exclusive* remedy for injuries of this class. With some slight modifications or elaborations all of the acts which have been passed in this country embody this fundamental idea. The amount of indemnity is precisely regulated by a fixed percentage of the extent by which the workman's earning capacity had been diminished as a consequence of the injury; and is paid in the form of a weekly stipend during disability. This percentage has been ordinarily established at 50 per cent, on the theory that the business being conducted for the benefit alike of the employer and employe the financial burden entailed by an injury should be borne in equal parts. This is the rate which has been adopted in the greater number of states, although six states have adopted higher rates, ranging from 60 per cent in the cases of Nevada and Texas to 66 2-3 per cent in the cases of Ohio and New York. The tendency at present is in the direction of providing a higher rate of compensation, but the wisdom of this is exceedingly doubtful.

It will be noticed that the writer has spoken of the compensation being a percentage of the workman's *diminished* earning capacity. Hence in the case of an injury which totally incapacitates a man from work—"total disability, so-called—he receives compensation at the rate of, say, 50 per cent of his average earnings. And in case the injury results merely in "partial disability," he receives compensation at the rate of, say, 50 per cent of the difference between his earnings and the wages he would be able to earn thereafter at some other employment in the pursuit of which his disability would not act as a hinderance. In determining the workman's earning capacity, as a criterion for computing the amount of compensation, resort is generally had to his earnings over a period (varying in different states) preceding the injury, so as to reach a fair basis of "average earnings."

Disability, whether "total" or "partial," may be either "temporary" or "permanent." Logically, the compensation, taking, as it does, the form of a weekly stipend during disability, should extend over the *entire* period of disability. In only a few of the states is provision for this made. Most of them fix a maximum limitation, measured either by a period of time, for instance, eight years, or by an amount of aggregate payments, for instance, $5,000. Such a policy is a concession to expediency and is likely to work ultimate injustice and hardship.

Thus far we have considered the compensation law in the light of non-fatal injuries. Many injuries of course result in the death of the workman, and in these cases the same general principle of indemnity applies. A fixed percentage of the workman's earning capacity, at the time of his death, is paid to his dependents during the period of their dependency. This percentage varies in accordance with the character of his dependents (i. e., whether widow, child, mother or father), the number of these dependents surviving him, and the extent to which each was in fact dependent upon him for support. In these cases, also, there is a limitation on the period during which compensation is payable, which may expire during the period of dependency, and which is open to the same objection as obtains in the case of disability.

In addition to the weekly stipend, practically all compensation laws provide for medical aid and funeral expenses. The extent to which necessary medical aid must be furnished differs in different states. It is subject to varying maxima. In some cases it is limited as to period, as for instance, ninety days following the injury; in others, it is limited as to amount, as for instance, $200. In some cases, the injured workman is allowed to select his own physician; in others he must be treated by a physician of the employer's selection, if he desires to claim the benefit of medical expense. Funeral expenses are generally allowed only in the case the workman leaves no dependents, and in that event they constitute the only charge against the employer. That is to say, nothing in the nature of compensation is paid to any one where the workman leaves no one dependent upon him for support.

The payment of compensation in the case of disability is subject to the qualification that ordinarily compensation does not run from the date of the injury. There is what is called a "waiting period" during which time compensation is not paid. This eliminates from the right to compensation all injuries of a trivial nature entailing only a few days of incapacity from work. In most of the states this period is fixed at two weeks; in a few it is one week, and in the case of Oregon and Washington, there is no waiting period at all. The purposes of the waiting period are to reduce the cost of compensation and to remove the inducement for the workman to lay off on slight provocation. From the standpoint of the workman, incapacity and loss of wages for a few days is not a serious deprivation. A great number of non-fatal accidents are of this trivial nature. In Massachusetts, during the first year of operation under the compensation law in that state, 76 per cent of all non-fatal accidents incapacitated the workman for two weeks or less, and of these 41 per cent of the total accidents incapacitated the workman for only one day. To pay compensation for these accidents, particularly when the added expense of administration is considered, would add disproportionately to the economic cost of compensation without any commensurate benefit to the workmen as a class.

Insurance of Compensation.—Under the old common law system, as well as under the employer's liability statutes, the indemnity to a workman for an occupational injury, if and when he recovered anything by way of compromise with his employer or as a result of litigation, was paid to him in a lump sum. The idea of the compensation law, however, is to pay the indemnity in the form of a weekly stipend during disability in the case of a non-fatal accident, or during dependency in the case of death. The duration of disability or dependency being likely, in many instances, to extend for some time, a new situation is presented under the compensation law which was not present, at least to the same extent, under the old system. This relates to the insurance compensation. There is always the danger that in some cases an employer might be financially irresponsible, or might become insolvent after an accident and before the expiration of the period during which compensation is payable. Indeed, instances are not rare where a catastrophe occurs which not only maims and kills a number of operatives, but also renders the employer insolvent by the destruction of a large part of his investment.

When the compensation movement had so far developed in this country that legislation seemed probable, the advocates of this legislation aligned themselves in support of either one of two somewhat opposing methods of working out the problem. On the one side there were those who advocated direct compensation; on the other, those who advo-

cated the state insurance plan. Direct compensation follows the English compensation law, whereas the insurance plan is modelled somewhat upon the systems prevailing in some countries of continental Europe. Direct compensation does no more than carry out the idea of individual liability according to the conceptions of Anglo-American jurisprudence. It makes the particular employer liable directly to his own workmen for injuries sustained by them in the course of their employment. The insurance plan, however, lays a tax, in the first instance, upon all employers in whose establishments accidents calling for indemnity are likely to occur. These taxes are used to create and maintain an insurance fund from which the indemnity is disbursed by the public authorities. The advocates of the insurance plan criticised the direct method because it made no provision for compulsory insurance of compensation, but left this optional with the employer. The advocates of direct compensation criticised state insurance, principally, because it would enable employers to shift their liability to a general fund, and was thus likely to induce carelessness amongst them and brood accidents rather than prevent them. State insurance was also objected to because the disbursement of relief money by the public authorities among so many voters would make possible the erection of a big political machine; because it would require the state to embark in the private business of insurance which it is incompetent to undertake; and because the field of "average risk" being limited, as it would be, to the particular state, would make the danger of insolvency of the state fund, upon the happening of a catastrophe, very substantial.

Experience has not been sufficient to test conclusively the merits of these various criticisms, but what little experience there has been would seem to indicate that on both sides they have been more partisan than just. The necessity for their analysis or further discussion in this article seems now past, because a middle ground has been worked out which promises to be a happy solution of the problem. The earlier acts, namely those passed during 1910-1912, beginning with New York and Washington, took the form of either state insurance or direct compensation without compulsory insurance. Michigan, however, has devised a method of alternative insurance. The act in that state is modelled upon the direct compensation plan, but also requires that the employers who might become liable to pay compensation shall make provision for the insurance of it in the following fashion: The employer is permitted to carry the risk himself if he can satisfy the public authorities that he is financially able to do so; otherwise, he is required to insure the payment of compensation either in a casualty company or in a mutual association or in a state insurance fund as he may elect. Since the formulation of this method of compulsory alternative insurance, and its satisfactory operation in the state of Michigan, it has been adopted in some of the other states, and the trend of legislation at the present time is decidedly in that direction.

Conclusion.—In the past four years this country has been educated to the view that a policy of workmen's compensation ought to supersede the system of employers' liability, and the actual experience under the compensation acts, which have been in operation during that period, confirms the views of their promoters that on considerations of economic expediency and distributive justice the change would be a wise one. The country has now, in substance, permanently committed itself to this new industrial policy. Will that policy continue to give the same satisfaction that it now gives? Much depends upon the way in which these laws are administered and the form which any future amend-

ments to them shall take. Reports come to us from foreign countries, convincingly supported by statistics, showing fraud and malingering on the part of the beneficiaries under the laws there; an increasing ratio of accidents due to workmen's carelessness—although the ratio of accidents due to employer's fault and trade risk has markedly decreased; and the development of a form of neurasthenia whereby the disability following the simplest accidents is abnormally accentuated and prolonged. Such abuses are, in some measure, doubtless due to lax administration of the laws by the public authorities, but in greater measure are due to three factors, (1) a high rate of compensation, (2) the pension system of paying compensation, and (3) the absence of some penalty upon contributory negligence.

Those who are charged with the administration of our compensation acts as well as those who will make the amendments to them in the future, might study with profit the experience of foreign countries, which, the writer believes, will show that in order to insure a continuance of the existing satisfaction with this system, the rate of compensation should not exceed a 50 per cent basis, the laws should provide liberally for the commutation of weekly compensation by a lump sum payment, and a penalty in the nature of a diminished compensation should be imposed in cases where the accident results from the workman's carelessness. Without some such amendments to our present laws and the embodiment of these ideas in future laws, there would seem to be some danger that the new system, in course of time, will bring upon itself criticism and create dissatisfaction, as indeed has been the case in some of the foreign countries where the system prevails.

J. WALTER LORD.

Baltimore, Md.

LANDLORD AND TENANT—GROWING CROPS.

COOK et ux. v. COOK et al.

Court of Chancery of New Jersey. June 8, 1914.

90 Atl. 1045.

A tenant of farm land for a term, certain or uncertain, may after the expiration of his term enter on the premises and cut and carry away all the grain sown but not ripe when his term expired.

BACKES, V. C. Mason M. Cook, his two brothers and two sisters, were tenants in common of a farm in Lawrence township, Mercer county. Mr. Cook was the tenant in possession from the time of his mother's death, from whom the farm was inherited, until it was sold under the decree in this suit. This was by reason of an agreement which he had with his brothers and sisters, whereby he was to have the use of the farm until it was sold, upon the promise by him to pay the interest on a mortgage, the taxes, and insurance premiums. At the time the farm was sold, June 18, 1913, there were growing crops which Mason had planted and sown. They were not reserved in the master's deed. In his answer to the bill, Mr. Cook set up a yearly tenancy in addition to his estate as tenant in common. By the interlocutory decree the matter was referred to a master to ascertain the interests of the respective parties, and by a supplemental order he was further directed to ascertain and report whether Mason M. Cook was the owner of any particular estate in the premises and, if so, what its fair and reasonable value was. The master reported the respective estates of the tenants in common, and further that Mr. Cook had such an estate which would terminate when the premises were sold, and possession given to the purchaser, and that its value measured by the probable reap was $701.05, which should be allowed to him. The final decree confirmed the master's report, except as to the part relating to Mr. Cook's particular interest and concerning which leave was given to file exceptions. The proceeds of sale have been divided, with the exception of $1,500, which the selling master has paid into court, to await the disposition of the exceptions. The matter is before me on exceptions filed by the complainant and Mason M. Cook, and on an order to show cause why the remaining money should not be equally distributed. The exceptions attack only the amount and not the propriety of the allowance. The right to it is raised by the petition upon which the order to show

cause was granted. The petition will be regarded as a further exception.

(1, 2) Did the growing crops pass to the purchaser by virtue of the sale and the master's deed, is the main and underlying question for decision. Mason M. Cook's tenure in the undivided interests of his cotenants in the farm, acquired by his agreement with them, was uncertain as to termination and as to them or their vendees, he was entitled to harvest the crops he had sown. A tenant of farm land, whether for a term certain or uncertain, has a right, after the expiration of his term, to enter upon the demised premises and cut and carry away all the grain which he has sown but which was not ripe when his term expired. Corle v. Monkhouse, 47 N. J. Eq. (2 Dick.) 73, 20 Atl. 367. But this rule is inapplicable as between Mason M. Cook and his vendee, viz., the purchaser under the master's sale. Mr. Cook occupied the farm in his own right of tenant in common, and his possession was made exclusive by the agreement with his brothers and sisters. Had he and his cotenants joined in a voluntary conveyance of the farm to the present purchaser, without reserving the crops, there could be no doubt as to their passing by the deed. Terhune v. Elberson, 3 N. J. Law (2 Penning.) 297. The sale and conveyance by the master accomplished the same result.

In Bloom v. Welsh, 27 N. J. Law (3 Dutch.) 177, which was an action to recover the value of winter grain growing on land purchased by the defendant at a sale under a common law execution, and which grain had been purchased by the plaintiff from the execution-debtor between the recovery of the judgment and the sale, it was held that the crop passed to the purchaser of the land under his deed. In that case, Chief Justice Green said:

"It will not be questioned, as a well-settled rule of law, that a conveyance of real estate, either by the owner or by the sheriff, under a sale by judgment and execution, carries with it the growing crops as an incident, unless there be an express reservation in the deed."

In Cropper v. Brown, 76 N. J. Eq. (6 Buch.) 406, 74 Atl. 987, 139 Am. St. Rep. 770, Vice Chancellor Garrison, in discussing the status of purchasers under judicial sales, said:

"In my view there is no real distinction in this state in respect to the principles to be applied respecting the rights of the parties between judicial sales and other similar sales voluntarily made between parties. The judicial sale is made by the officer in whom the law has lodged the power to make the sale. The fact that it is in invitum, and that the officer is only exercising a power and has not title does not, in my view, in any way alter the rules to be applied when the contract has once been made. * * * By what seems to me to be a perfect analogy, it must therefore be held that when this legal agent, namely, the judicial officer, observing proper legal formalities, at a public sale strikes off the property to a purchaser, who thereupon signs the conditions of sale, thereby entering into a contract to purchase the premises named at the price named, the situation is exactly the same as if the contract were between private parties. The sheriff is vested by law with the power, on behalf of the persons against whom he holds the writ, to sell the property .This he does, and a written contract satisfying the statute of frauds is then made. I cannot perceive any reason why the same principles should not control the parties with respect to this contract as would control private parties voluntarily entering into a similar one."

The doctrine of these two cases is applicable to sales made by virtue of decrees in partition suits. In Calhoun v. Curtis, 4 Metc. (Mass.) 413, 38 Am. Dec. 381, Chief Justice Shaw held that where one of several tenants in common of land, without leave or objection from his cotenants, occupied it exclusively, and sowed it with grain, and partition of the land was made while the grain was growing, that the grain growing on the purparty of each owner of the land, became the property of each in severalty. He states the reasons for so holding to be that the case of the tenant who sowed was "not within the equitable principle on which emblements are allowed by law to an outgoing tenant, because, when he sowed the rye, he knew that the land was at any time subject to partition, on the application of his cotenants, or any of them, and of course might be divided and assigned to another cotenant, in severalty, before the crop could come to maturity." And so it follows that where land is cultivated by one tenant, with the consent of the others, and, because it is not partible, is sold under statutory authority, the court's officer becomes the agent of all of the parties in conveying the land, which conveyances carries with it the crops as an incident to the soil, unless especially reserved.

The passing of the title to the crops gave Mason M. Cook an equity in the proceeds, which, upon the plainest principles of justice, ought to be protected. The state of cultivation to which he had brought the farm at the time of the sale was undoubtedly a feature which enhanced the purchase price, and to that extent he is entitled to compensation.

(3) There is another reason arising out of the circumstances of this case why the allowance

should stand. There seems to have been a tacit understanding between the parties to the suit that the crops should pass by the sale, and that Mr. Cook should be reimbursed out of the proceeds. While the matter was pending before the reference master, the supplemental order was made directing him to ascertain and report the value of Mason M. Cook's special interest by reason of his ownership of the crops. This order was entered by the solicitor of the complainant, with the consent of Mr. Cook's attorneys, and to my mind clearly evinces that it was understood that the crops could not be harvested before the sale, that they should not be reserved from the sale, and that they should form a part of it; for, why the order, if this was not contemplated? The exceptions, which were filed before the sale, give the intimation that this was the attitude of mind of both exceptants. Any question as to the right of the crops seems to have been an afterthought, first raised by the petition for the distribution of the money paid into court. If the question has been raised in limini Mr. Cook might, and probably would, have protected himself by application to the court to except the crops from the operation of the sale. The supplemental order and the proceedings thereunder were assurances to him that he was to be allowed for them out of the proceeds of the sale.

Holding as I do that Mason M. Cook is entitled to compensation, and as the amount thereof, as ascertained and reported by the master, although excepted to, was not challenged upon the arguments or in the briefs of counsel, I will advise an order overruling the exceptions, and that the money in court be distributed by paying first to Mr. Cook the amount found by the master. Costs of these proceedings will be allowed out of the fund.

NOTE.—*In Sale Under Partition Equities to be Adjusted Between Co-tenants.*—There seems no sensible distinction so far as purchasers are concerned between a sale under voluntary partition and a judicial sale *ad invitum*. If there are any improvements or growing crops they are supposed correspondingly to have enhanced the general selling price and the matter is to be finally resolved in the adjustment of claims and equities between the tenants in common, a court of equity having acquired jurisdiction to adjust even the question of advancements between them. Bozone v. Daniel (Ala.), 39 So. 774; Scott v. Harris, 127 Ind. 520, 27 N. E. 150; Finch v. Garrett, 102 Iowa 381, 71 N. W. 429; Herchenweder v. Herchenweder, 75 Mo. App. 283. And if this be true, *a fortiori*, should it not be deemed true, that what is done directly by one tenant to enhance the selling price should be deducted from the general sum to be distributed. Thus it was held that where a co-tenant made improvements in partible property the part a cotenant has improved should be allotted to him without regard to the value of the improvements, or if the property is not partible he should be compensated for the value of the improvements. Noble v. Tipton, 219 Ill. 182, 76 N. E. 151, 3 L. R. A. (N. S.) 645. This is not a legal right, but one resting on equitable principles. Allen v. Hawley, 117 Ind. 532. 20 N. E. 441; May v. May, 111 Iowa 161, 82 N. W. 481; Ballou v. Ballou, 94 Va. 350, 26 S. E. 840, 64 Am. St. Rep. 733.

That this principle applies to growing crops is recognized as shown in Banta v. Merlbaut, 173 N. Y. 292, 66 N. E. 13, where it was adjudged that there was not sufficient notice of reservation as against a purchaser at a partition sale, but there would be a right to have the matter adjusted in distribution of the proceeds of sale. This case is distinct upon the proposition that there must be a definite reservation in a partition sale for the ungathered crops not to pass to the purchaser.

We have to conclude that a court of equity is vested with large discretion in settlement of equities in a partition, and that there is a sort of principle of estoppel against one co-tenant apparently offering property as it stands for sale and then not fully passing title to all that apparently is sold. The rule we conceive to be different between landlord and tenant, and as to those succeeding to a tenant's rights. C.

ITEMS OF PROFESSIONAL INTEREST.

A POETICAL LEGAL MENU.

Some of our subscribers whose pleasant duty it sometimes becomes to prepare the menus for bar association banquets are frequently on a still hunt for new ideas. For their information we give below the menu of a banquet given by the Richland County (Ohio) Bar some months ago:

* * *

Invitation.

"The table is prepar'd, the Lawyers are met,
The Judges all arranged,—a terrible show.
The Beggar's Opera. Act III. Sec. 2.—John Gay.

* * *

First Course.

"He was a bold man that first ate an **Oyster.**"
—Swift.

"Some smack of age in you.

"Some **relish** of the saltness of time."—Shakespeare.

* * *

Second Course.

"Fool—So, Sirs, the pirates of your Inns of Court"
Do prowl in every troubled sea, and take
A toll of every scaly fish that swims
Within the lawyer's net."
Leweson's "The King's Hostage."

Third Course.

"She's no **chicken**; she's on the wrong side of Thirty, if she be a day."—Swift.

"He hath an eye like a **potato**.
He looketh but seeth naught."—Anon. (Vegetius.)

"As like as one **pea** is to another."—Lyly.

"Oh, the **roast beef** of England,
And Old England's roast beef."—Fielding.

* * *

Fourth Course.

"My **salad days**,
"When I was green in judgment."—Shakespeare.

* * *

Dessert.

"He had an oar in every man's boat,
And an ambitious finger in every **pie**."—Cervantes.

"King—What, shall the mercy of our State be sealed
The ocean of our justice froze to **ice**!
"Fool—I would it were, then would lawyers' fees be icicles, and bailiffs die of chills."
—Crashaw's "A Royal Pardon."

* * *

A Good Smoke.

"I am glad that my lady hath a sweete tooth in her head."—Lyly.

"Divine in hookas, glorious in a pipe
When tipped with amber, mellow, rich and ripe:
Like other charmers, wooing the caress
More dazzingly when daring in full dress;
Yet thy true lovers more admire by far
Thy naked beauties—give me a **cigar**!"—Byron.

* * *

Our Toast.

"Here's to the bride and mother-in-law,
Here's to the groom and father-in-law,
Here's to the sister and brother-in-law—
Here's to friends and friends-in-law.
May none of them need an attorney-at-law."

* * *

Program.

"Here St. John mingles with my friendly bowl,
The feast of reason and the flow of soul."—Pope.

Toastmaster .....W. H. Gifford

"Who to himself is law, no law doth need,
Offends no law, and is a King indeed."—Chapman.

* * *

Guest of Honor,
Hon. John H. Clark, of Cleveland, Ohio,
"Our Country."

"He is a scholar, and a ripe and good one;
Exceeding wise; fair-spoken, and persuading."
—Shakespeare.

The Lawyer?

Air—"The Pope."

The lawyer leads a busy life,
He's never free from care and strife;
With contracts, crimes and torts and wills
The lawyer never can be still.
Chorus—With contracts, crimes and torts and wills,
The lawyer never can be still.

So full is he of legal lore
There's scarcely any room for more,
And if there's aught he does not know
He'll never tell his client so.
Chorus—And if there's aught he does not know,
He'll never tell his client so.

When to the court room he doth go
His words will never cease to flow,
Till the final ray of hope is gone;
Then he appeals and goes right on.
Chorus—Till the final ray of hope is gone;
Then he appeals and goes right on.

And when he comes to charge his fee,
He's never hurt with modesty;
Enormous charges he will make
Until his client he doth break.
Chorus—Enormous charges he will make
Until his client he doth break."

REPORT OF THE MEETING OF THE BAR ASSOCIATION OF NORTH DAKOTA.

Editor Central Law Journal:

The last meeting of the North Dakota Bar Association was held at Grand Forks, Sept. 1. It was by far the best meeting ever held by this association. All of the members of the Supreme Court of this state attended and remained during the entire session and were very much interested in it. There was a very free, frank expression of opinion between the lawyers and the bench as to judicial procedure, delay in deciding cases, criticism of the court including charges of misquotation of law and fact and I believe that as a result of this meeting there was and is at the present time a clearing away of the misunderstandings that had existed in the past and a better understanding of the position of the bench by the bar than before. It was the feeling of the association, it seemed to me, that efforts should be made to elevate the practice of law, require a higher standard from the lawyer and from those seeking admission to practice, to protect the lawyer in the practice of law and to adopt means to rid the profession of those who do not conform to proper ethical practice

and to put a stop to the illegal practice of law by those who are not licensed as such. There has been a great interest taken in the association and more than two hundred new members have been taken into the association during the past year. Yours very truly,

OSCAR J. SEILER,
Secretary.

Jamestown, N. Dakota.

CORRESPONDENCE.

THE UNIFORM NEGOTIABLE INSTRUMENTS LAW IN THE COURTS OF MISSOURI.

Mr. A. H. Robbins, Managing Editor Central Law Journal, St. Louis, Mo.

My Dear Mr. Robbins:—I find to-day two more Missouri cases, and I hasten to send them to you so that you can put them in my article, under the date 1913, and thus make my article a complete record of the Missouri cases.

These cases are:

Market & Fulton Nat. Bk. v. Philip, 172 Mo. App. 404, 1913.

This case held that where an instrument is to the order of two or more payees or indorsers, who are not partners, it must be indorsed by all, unless the one indorsing has authority to indorse for all, citing secs. 71, 79, 320 (41, 49, 184), and numerous old authorities, but no cases under the act, although there are many of them.

The second case is:

Mineral Belt Bk. v. Elking Lead & Zinc Co., 173 Mo. App., 1913.

It was held in this case that there was nothing on the note showing that it was the defendant's note, nor that there was any ambiguity about it. The note was signed, "L. Kreilsheimer by Jessie Schooler." It was held that the action could not be sustained against the alleged principal, citing secs. 37 (18) and many old Missouri cases, but no case under the act. On the last page of my typewritten article returned to you, first line, change 39 to 41, in consequence of the inclusion of these two new cases, and in the preceding paragraph, change 56 to 58. Yours truly,

AMASA M. EATON.

[NOTE.—This is one of the last letters Mr. Eaton wrote in his lifetime. He died October 3, 1914.

We are sorry that we were unable to add these cases to the article of Judge Eaton in 79 Cent. L. J. 255 where he discusses so ably the subject of the Uniform Negotiable Instruments Law in the courts of Missouri. These articles by Mr. Eaton on the attitude of the courts of the several states toward this, the principal and earliest uniform act, will be calculated to arouse the bench and bar to a situation that is unnecessary and disappointing and one that calls for prompt correction.—Editor.]

HUMOR OF THE LAW.

"Johnnie," said a prominent mine operator to his youngest the other day, "I'll give you a dollar if you'll dig up the front yard for your sister's new garden." "All right," said Johnnie thoughtfully. "But I shall have to ask 25 per cent of the contract price in advance; not as an evidence of good faith, but for working capital." "But—what do you mean?" "Well, you see, I guess I'll bury the quarter somewhere and tell all the boys in the neighborhood that a pirate hid some treasure round there. When they strike that quarter they'll make the dirt fly, I can tell you. In that way I can clean up about 75 per cent. In fact, I"—"Well, what?" "In fact, I don't know but what I can also arrange so as to find that that quarter myself. I'll work it just like that salted mine you were telling mamma about unloading on the street last night." And the father wept tears of joy.—*Pall Mall Gagette.*

Among the Monday morning culprits haled before a Baltimore police magistrate was a darkey with no visible means of support.

"What occupation have you here in Baltimore?" asked his honor.

"Well, jedge," said the darkey, "I ain't doin' much at present—jest circulatin' 'round, suh."

His honor turned to the clerk of the court and said:

"Please enter the fact that this gentleman has been retired from circulation for sixty days."—*Green Bag.*

Lawyer (in equal-suffrage state)—Don't worry, the jury is sure to disagree.

Prisoner—But are you certain?

Lawyer—It's inevitable; two of the jurors are man and wife!—*Puck.*

A lawyer reported to us the following "true" story to prove the untruth of the statement so often made that a lawyer knows something about everything.

A lawyer's wife requested him to buy her a shirt-waist.

"What bust?" inquired the saleslady.

"Why, I am sure I do not know," answered the astonished lawyer." Did you hear anything?"

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Bailment**—For Hire.—One who obtains a suit of clothes to clean and press for a compensation is a bailee for hire.—Corbin v. Gentry & Forsythe Cleaning & Dyeing Co., Mo., 167 S. W. 1144.

2.——Repairs.—Under a lease of a steam shovel requiring its return in good condition, ordinary wear and tear excepted, the lessees cannot recover the expense of a repair.—Pacific Bridge Co. v. Riverside Rock Co., Ore., 141 Pac. 751.

3. **Bankruptcy**—Contempt.—Bankr. Act, § 7, cl. "a" (9), providing that bankrupt's testimony shall not be offered in evidence in any criminal proceeding, does not make the testimony inadmissible in a proceeding to punish him for contempt in giving evasive answers.—In re Kaplan Bros., U. S. C. C. A., 213 Fed. 753.

4.——Preference.—Where a mortage given more than four months before bankruptcy, but recorded within that time, was under the state law valid as to judgment and other creditors without recording, it was not a voidable preference.—In re Boyd, U. S. C. C. A., 213 Fed. 774.

5.——Reservation of Title.—Where contract reserving title was not recorded as required by Civ. Code 1912, S. C. § 3740, vendee's trustee in bankruptcy held to hold the property for the benefit of all the creditors, both subsequent and antecedent.—Augusta Grocery Co. v. Southern Moline Plow Co., U. S. C. C. A., 213 Fed. 786.

6. **Bills and Notes**—Indorser.—That an indorser of a note was given a mortage to secure him did not dispense with the necessity of presenting the note for payment and giving notice of nonpayment.—First Nat. Bank of Binghamton v. Baker, 148 N. Y. Supp. 372.

7.——Indorser.—Under Negotiable Instruments Act, notice of dishonor need not be given to an indorser, where he is the person to whom the instrument is presented for payment.—Westinghouse Electric & Mfg. Co. v. Hodge, Mo., 167 S. W. 1186.

8.——Possession.—The rule that possession of a note is prima facie evidence of title does not apply to a note payable to order not transferable by delivery.—Sloan v. Gilmore, Tex., 167 S. W. 1089.

9. **Brokers**—Fraud.—A broker is guilty of fraud and bound to disgorge all his profits, above his commissions where, being employed to sell at a certain price, on commission, he induces a sale at a less price, on representation that he can secure no more, and secretly receives the difference from the customer.—Middlefork Cattle Co. v. Todd, Mont., 141 Pac. 641.

10.——Marginal Transactions.—An agreement between cotton brokers and a customer that marginal transactions might be closed without notice when margins were running out, if made, was a complete defense to an action for the sale of cotton purchased on margin without notice.—Smith v. Craig, N. Y., 105 N. E. 798.

11.——Sale by Owner.—The placing in a real estate broker's hands to sell will prevent the owner from selling only when it is so agreed.—Hill v. Horsley, Ga., 82 S. E. 225.

12.——Unenforceable Contract.—Where a broker, employed by defendant and a third person to sell or exchange their respective lands induced the parties to enter into a contract of exchange, but the contract was unenforceable, the broker had not earned his commissions.—Bird v. Rowell, Mo., 167 S. W. 1172.

13. **Cancellation of Instruments**—Laches.—Where, in a suit to rescind an executed contract for the sale of land, where plaintiff has been in possession for three years with knowledge of the state of the title and made improvements, and any misrepresentations as to the character of the land could have been discovered by plaintiff within one year, he was guilty of laches, and his remedy was not by rescission, but by an action on the covenants of his deed.—Reed v. Rogers, N. M., 141 Pac. 611.

14. **Carriers of Goods**—Bill of Lading.—A bill of lading though non-negotiable represents the goods, and a sale of the goods coupled with the delivery of the bill of lading transfers possession of the goods.—Long-Bell Lumber Co. v. Chicago, B. & Q. R. Co., Mo., 167 S. W. 1183.

15.——Broker.—A broker to whom goods have been consigned for sale on commission has sufficient interest to maintain an action against the carrier for damages to the goods, and his judgment will bar another action by the real owner.—Collins v. Denver & R. G. Ry. Co., Mo., 167 S. W. 1178.

16. **Carriers of Passengers**—Contributory Negligence.—A passenger who, not familiar with a railroad station, walked around the platform in the dark looking for the toilet room, was guilty of contributory negligence preclud-

ing recovery for injuries caused in a fall from such platform.—Hickman v. Missouri, K. & T. Ry. Co., Mo., 167 S. W. 1178.

17.——Limitation of Liability.—Under the federal statutes, the provision, in a ticket for interstate transportation, limiting the carrier's baggage liability to $100 for a whole ticket," being in accordance with the carrier's tariff filed with the Interstate Commerce Commission, governs in case of loss, even through the carrier's negligence; the passenger not having, at time of checking her baggage, declared a greater value and offered to pay for additional service.—Wright v. Southern Pac. Co., Mo., 167 S. W. 1137.

18. **Chattel Mortgages**—Defined.—A chattel mortgage is a present transfer of title, defeasible by payment of the sum secured thereby, and, in default, the title of the mortgage is absolute, subject to the mortgagor's equity of redemption.—Peter Barrett Mfg. Co. v. Wheeler, N. Y., 105 N. E. 811.

19. **Commerce** — Intoxicating Liquors.—The Webb-Kenyon Act, making it unlawful to transport into a state intoxicating liquor "intended by any person interested therein to be received, possessed, sold, or in any manner used . . . in violation of any law of such state," is a proper exercise of the power vested in Congress to regulate commerce.—American Express Co. v. Beer, Miss., 65 So. 575.

20.——Practice.—An action in a state court under the federal Employers' Liability Act must be tried according to the state rules of procedure.—Sweet v. Chicago & N. W. Ry. Co., Wis., 147 N. W. 1054.

21. **Contempt**—Civil Contempt.—In a "civil contempt" the proceeding is a remedial step in a cause between the parties; and hence, if the contemnor be imprisoned, it is only until he performs some required act beneficial to the other party.—Staley v. South Jersey Realty Co., N. J., 90 Atl. 1042.

22. **Contracts**—Rescission.—In a suit to rescind a contract, the fact that there has been a breach on both sides does not preclude the granting of relief.—Crowe v. Oscar Barnett Foundry Co., U. S. D. C., 213 Fed. 864.

23. **Corporations** — Injunction.—Courts of equity will restrain the majority stockholders of a corporation from using their power as such to ratify an illegal lease and sale of corporate property at less than one-tenth of its value.—Franklin v. Havalena Mining Co., Ariz.,141 Pac. 727.

24.——Stockholders.—A corporation increasing its capital stock may offer the stock at par to its bona fide stockholders, who appear to be such on the books of the corporation, and it need not accept the subscription of any other person.—Schmidt v. Marconi Wireless Telegraph Co. of America, N. J., 90 Atl. 1017.

25.——Subpoena.—Service of summons on the secretary of the defendant corporation, while he was necessarily in attendance on the trial court as a witness in another action between defendant as plaintiff and a third person and was within the state for no other purpose, was void.—Rix v. Sprague Canning Machinery Co., Wis., 147 N. W. 1001.

26. **Courts**—Laches.—While, in the application of the doctrine of laches in an equity suit, a federal court is not bound by a state statute of limitations, it will usually act or refuse to act in analogy to the state statute limiting actions at law of like character.—Davey v. Dodge, U. S. C. C. A., 213 Fed. 722.

27. **Criminal Law**—Argument.—The court attorney, in his argument to the jury on a trial for rape, ought not to make adverse comment on the refusal of the wife of accused to testify for the privilege of testifying is hers alone.—Zuwalt v. State, Ariz., 141 Pac. 710.

28.——Former Jeopardy.—An acquittal under an indictment for murder will not avail accused as former jeopardy when he is subsequently indicted for unlawfully carrying the pistol, with which, and when, he did the killing.—Brown v. State, Tex., 167 S. W. 1107.

29.——Impeachment of Verdict.—A juror's statement made after verdict, whether coming from him or from a third person, indicating that the juror was prejudiced, is inadmissible to vitiate the verdict.—State v. Edwards, La., 65 So. 634.

30.——Practice.—Where the jury returned a verdict of guilty, but, on discovering that they had, by mistake, signed the blank verdict of not guilty, were allowed to again retire, the recording of the mistakenly signed verdict of not guilty was not conclusive of acquittal.—Gordon v. State, Wis., 147 N. W. 998.

31. **Damages**—Rule for Estimating.—An instruction on damages for taking and injuring land should lay down a definite rule to guide the jury in estimating the damages.—Pettit v. Commissioners of Wicomico County, Md., 90 Atl. 993.

32. **Deeds**—Consideration.—The mere fact that a son who was under no legal obligation to support his father refused to do so, unless the father conveyed his property in consideration of the son's contract to support him, in the absence of any coercion or unfair advantage by the son to compel the conveyance, of itself held not to warrant setting it aside.—Purdy v. Watts, Conn., 90 Atl. 936.

33.——Construction.—A deed conveying an immediate estate, with present enjoyment, to a woman and her children vested title in her and in her children then in being, as tenants in common—but children born thereafter took no interest under the deed.—Powell v. James, Ga., 82 S. E. 232.

34. **Disorderly House**—Reputation.—In a prosecution for keeping a bawdyhouse, the evidence of the marshal and his deputy that defendant said she ran the house and had five girls, and that the reputation of the girls and of the house was bad, held sufficient to sustain a conviction.—City of Columbia v. Stout, Mo., 167 S. W. 1153.

35. **Divorce**—Counterclaim.—Under Code Civ. Proc. § 1770, providing for counterclaim in matrimonial actions for divorce or separation defendant, in an action against him for separation, may not interpose a counterclaim for annulment on the ground of his own physical incapacity.—Levey v. Levey, 148 N. Y. Supp. 417.

36.——Desertion.—A husband was not entitled to divorce for desertion consisting of a wife's refusal of sexual intercourse, where the husband failed to provide her with adequate support according to his station in life.—Oertel v. Oertel, N. J., 90 Atl. 1006.

37. **Equity**—Jurisdiction.—A claim of an equitable estoppel is as available at law as in equity, and is not sufficient ground for equitable jurisdiction.—International Paper Co. v. Bellows Falls Canal Co., Vt., 90 Atl. 943.

38. **Estoppel**—Misrepresentation.—Where a town supplied defendant with motive power and by mistake the bills paid were for only one-tenth of the amount actually due, defendant cannot defeat plaintiff's rights by urging equitable estoppel in reliance on plaintiff's innocent mistaken representation as to the facts not made to induce him to so act.—Borough of Vineland v. Fowler Waste Mfg. Co., N. J., 90 Atl. 1054.

39. **Frauds, Statute of**—Memorandum.—A contract for the exchange of land for a stock of merchandise, which describes plaintiff's farm as "80 acres of land 1¾ miles N. of Merwin, Bates county, Mo.," sufficiently describes the land within the statute of frauds.—Tracy v. Berridge, Mo., 167 S. W. 1176.

40.——Oral Agreement.—A parol agreement between two persons, not partners, that one shall buy certain lands and thereafter convey a one-third interest to the other on payment of a ratable portion of the purchase price, being within the statute of frauds, cannot be enforced.—Griffith v. Cook, W. Va., 82 S. E. 256.

41.——Original Promise.—A promise by a corporation's officers to pay a contractor for all work done or to be done for it, in reliance upon which the contractor did not file a threatened mechanic's lien and completed the work, was an independent original promise founded on a new consideration, and not within the statute of frauds.—Windsor Const. Co. v. Ruland, 148 N. Y. Supp. 387.

42.——Standing Timber.—Standing timber is a part of the realty, and a contract for the sale thereof must be in writing, within the statute of frauds.—Starks v. Garver Lumber Mfg. Co., Mo., 167 S. W. 1198.

43. **Fraudulent Conveyances**—Bulk Sales Law.—A purchaser of goods in violation of the Bulk Sales Law is a trustee of the property at least to the extent of the claim of a creditor seeking to subject the property thereto, without reference to whether the goods have been mingled with other property or sold.—Wheeler & Motter Mercantile Co. v. Moon, Mont., 141 Pac. 665.

44.——Knowledge of Grantee.—A person to whom a debtor conveyed land to defraud creditors, and who had knowledge of the fraud long before he parted with any consideration except a small amount, made payments at his peril, though innocent of any intentional participation in the fraud at the time of the transfer.—Watt v. Aylward, S. D., 147 N. W. 978.

45. **Homicide**—Conspiracy.—Where a homicide is committed in carrying out a conspiracy to commit any felony, all parties to the conspiracy are guilty of murder; but, where the conspiracy is for a less serious offense, they are guilty of manslaughter.—State v. McCollum, La., 65 So. 600.

46. **Injunction**—Equity.—A stipulation in a firm agreement for the general practice of medicine at a city, that defendant will not practice medicine in the city for three years after the termination of the firm, is enforceable in equity at the suit of plaintiff.—Marvel v. Jonah, N. J., 90 Atl. 1004.

47. **Insurance**—Agency.—An insurance agent ordinarily has power to make an oral contract of insurance and agree that the insurance shall be in force after signing the application and payment of the premium before delivery of the policy, in the absence of notice to the insured that such authority does not exist.—Clark v. Bankers' Accident Insurance Co. of Des Moines, Iowa, Nebr., 147 N. W. 1118.

48.——Agency.—An agent with authority to solicit insurance and receive payment of the premium has no apparent authority to accept the cancellation of his own indebtedness for such premium, and where the creditor has knowledge of the agency he cannot avail himself of payment made in that way.—Briggs v. Collins, Ark., 167 S. W. 1114.

49.——Statutory Right.—Where a statute makes provision for the benefit of insured in a life policy, the parties to the insurance contract may not contract away the statutory right and thereby nullify the statute.—Chandler v. John Hancock Mut. Life Ins. Co., Mo., 167 S. W. 1162.

50. **Joint Adventures**—Partners.—Joint adventurers owe each other practically the same duties as partners, who owe each other the exercise of good faith and ordinary care and prudence, and, if loss occurs by the conduct of one partner, the loss falls on the firm, unless there has been default by that partner in the performance of one or both of those duties.—Knudson v. George, Wis., 147 N. W. 1003.

51. **Judgment**—Fraud.—A judgment cannot be set aside for fraud in obtaining it, but only for fraud which is extrinsic or collateral.—Buchler v. Black, U. S. D. C., 213 Fed. 880.

52.——Practice.—A motion to set aside a verdict and judgment and for judgment non obstante veredicto comes too late when made after entry of judgment.—Zilka v. Graham, Idaho, 141 Pac. 639.

53. **Landlord and Tenant**—Crops.—When a tenant rented a farm in August, 1910, at $1.000 yearly rental, sowed it in wheat in the fall of 1912, and moved away early in 1913, held, that tenant was entitled to one-half the crop and the landlord one-half, and tenant could recover from landlord one-half the amount he had paid out for phosphate.—Hill v. Lea Milling Co., Del., 90 Atl. 1066.

54.——Crops.—A tenant of farm land for a term, certain, or uncertain, may after the expiration of his term enter on the premises and cut and carry away all the grain sown, but not ripe when his term expired.—Cook v. Cook, N. J., 90 Atl. 1045.

55. **Libel and Slander**—Privilege.—Where a letter respecting the advancement of a sergeant of the National Guard was sent by the colonel to the captain for explanation or indorsement, his indorsement thereon as to the sergeant's fitness was privileged, and he could not be held for libel in the absence of "malice," which means being actuated by an unjustifiable motive.—Gray v. Mossman, Conn., 90 Atl. 938.

56. **Limitation of Actions**—Suspension.—Where legal proceedings restrain one party from exercising a legal remedy against another the running of the limitations is postponed or suspended during such restraint.—City of Hutchinson v. Hutchinson, Kan., 141 Pac. 589.

57. **Malicious Prosecution**—Malice.—The existence of a probable cause is a complete defense in an action for malicious prosecution, though the prosecutor may have been actuated by malice.—Cox v. Lauritsen, Minn., 147 N. W. 1093.

58. **Master and Servant**—Burden of Proof.—Where plaintiff was injured by the operation of defendant's automobile in charge of a chauffeur, the burden was on defendant to establish that the chauffeur at the time of the accident was operating a machine for a purpose of his own.—Benn v. Forrest, U. S. C. C. A., 213 Fed. 763.

59.——Competent Servants.—A master must use proper diligence in the employment of competent men and, after the employment, must keep himself advised as to their fitness and not retain in his employment incompetent servants.—Strinker v. Ray Consol. Copper Co., Ariz., 141 Pac. 740.

60.——Pleadings.—An employe, suing for a personal injury, may include in the complaint sufficient specifications of negligence to meet any probable condition which might have caused the accident.—Schnare v. Ryan-Unmack Co., Conn., 90 Atl. 933.

61.——Workmen's Compensation Act.—Where an employe was injured through the negligence of one not his employer, under such circumstances as entitled him to compensation from his employer under the Employers' Liability Act the employer could not recover from the tort-feasor for the compensation paid under the statute.—Interstate Telephone & Telegraph Co., N. J., 90 Atl. 1062.

62. **Monopolies**—Right of Action.—The mere fact that a corporation is an unlawful combination will not relieve a person, who has bought goods under a lawful contract, from paying for them.—Pulp Wood Co. v. Green Bay Paper & Fiber Co., Wis., 147 N. W. 1058.

63. **Municipal Corporations** — Estoppel.—Where a town is sued on a contract for water supply, which contract is invalid because unauthorized, the town is not estopped to deny the validity of the contract and prevent a recovery on it on a quantum meruit.—Hagerman v. Town of Hagerman, N. M., 141 Pac. 613.

64.——Pedestrian.—A pedestrian, knowing of a defect in a street not obviously dangerous, may use it, provided he exercises the care which a reasonably prudent person would exercise under the circumstance.—Lueking v. City of Sedalia, Mo., 167 S. W. 1152.

65.——Streets and Highways.—Where fallen snow was not removed from a sidewalk and by the alternative thawing and freezing formed into a rough coating of ice covering the whole sidewalk, including the pathway made by pedestrians, the city was liable for injuries sustained by a person falling thereon.—Jackson v. Kansas City, Mo., 167 S. W. 1150.

66. **Negligence**—Licensee.—One in possession of premises must act with due care towards a

licensee, where he acts at all, or he will be liable for any injury sustained by the licensee as a result of such acts.—Knowles v. Exeter Mfg. Co., N. H. 90 Atl. 970.

67. **Nuisance**—Defined.—A private nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another, or any unwarrantable, unreasonable, or unlawful use by one of his own property to the injury of another.—Barnes v. Hagar, 148 N. Y. Supp. 395.

68. **Partnership**—Test of.—Where plaintiff and another contracted to buy land, each paying one-half of the price, they were not copartners, and a settlement with one of them for the earnest money on breach of contract by the seller did not bar plaintiff's right to recover earnest money paid by him.—Breen v. Arnold, Wis., 147 N. W. 997.

69. **Post Office**—Scheme to Defraud.—Where accused sought by use of the mails to obtain whiskey from another by means of checks drawn on a bank in which accused knew he had no funds, he was guilty of using the post office in furtherance of a scheme to defraud.—Charles v. United States, U. S. C. C. A., 213 Fed. 707.

70. **Principal and Surety**—Mortgage.—Where a holder of mortgage notes, indorsed as additional security, impairs the mortgage security, he loses, to the extent of the impairment, his recourse against the indorser.—Interstate Trust & Banking Co. v. Young, La., 65 So. 611.

71.——Personal Liability.—An agent who in good faith makes a contract in the name of his principal, under the belief that he has authority so to do, is not liable where the contract is enforceable against his principal, but is liable on an implied warranty of authority in case the contract is not so enforceable.—Chieppo v. Chieppo, Conn., 90 Atl. 940.

72. **Railroads**—Termination of Estate.—A deed conveying land "for railroad purposes only and for the time that they shall so use it," does not terminate the grantee's estate, though some part of it may be put to a use which, though designed to increase the railroad business, is not accessorial to a strict railroad use.—Lawon v. Georgia Southern & F. Ry. Co., Ga., 82 S. E. 233.

73. **Sales**—Agency.—A contract between a medicine company and an individual, which requires the company to ship medicines to him for sale at retail and binds him to remit weekly one-half of the proceeds, is an agency contract, and the individual is not liable for the value of goods in his possession at the termination of the contract.—Davis v. Woolsey, S. D., 147 N. W. 977.

74.——Rescission.—Though a vendor refuses to accept a return of the article sold, that will not defeat the purchaser's right to rescission.—Peterson v. Barbero, Mo., 167 S. W. 1180.

75. **Specific Performance**—Presumption.—The presumption created by Civ. Code, § 3387, that the breach of a contract of sale of personalty can be compensated by damages, so that equity will not decree specific performance, is a disputable one, and, where the facts show that pecuniary compensation will not afford adequate relief, specific performance will be enforced.—Gilfallan v. Gilfallan, Cal., 141 Pac. 623.

76.——Statute of Frauds—The statute of frauds held not a bar to the enforcement of an oral agreement that, if a sister would keep house for her brother, she should have his property at his death.—Smith v. Cameron, Kan., 141 Pac. 596.

77.——Tender.—A purchaser in a contract for sale of real estate, which binds the vendor to perfect title, and which gives the purchaser a reasonable time in which to perfect loan and abstract, may compel specific performance without tendering the price or showing his financial ability to pay, where the vendor refused to perfect the title.—Edwards v. Watson, Mo., 167 S. W. 1119.

78. **Trover and Conversion**—Tender—After the conversion of property has become complete, the wrongdoer cannot escape liability nor lessen the actual damage recoverable by a tender of property of the same kind as that converted.—Arneson v. Nerger, S. D., 147 N. W. 982.

79. **Trusts**—Testamentary Gift.—A testamentary gift to trustees, to pay from the income a specified sum to testator's widow for life, and the balance to his children equally during the life of the widow, creates a valid express trust, under Real Property Law, § 96.—Tredwell v. Tredwell, 148 N. Y. Supp. 391.

80. **Vendor and Purchaser**—Burden of Proof.—Where a vendor was to furnish a good and sufficient title, the burden was on plaintiff to show that the abstract did not set forth a marketable title.—Peterson v. Hultz, Nebr., 147 N. W. 1126.

81.——Money Paid.—Where a vendee pays money in part performance of an executory contract and fails to perform it, he cannot recover of the vendor the money so paid.—Helm v. Rone, Okla., 141 Pac. 678.

82.——Rescission.—Where a vendor failing to deliver a deed conveying a good merchantable title rescinds with the purchaser's consent, he cannot ordinarily recover purchase money on deposit in a bank in escrow.—Adler v. Kohn, Nebr., 147 N. W. 1131.

83.——Specific Performance.—Exclusive, open, continuous, adverse possession for 41 years by devisees under void devises gives valid title to the devisees so that they may maintain specific performance to compel a purchaser to carry out his contract to purchase.—Novak v. Trustees of Orphans' Home in Baltimore City, Md., 90 Atl. 997.

84. **Wills** — Attestation.—Where witnesses were called to attest a will which the testator had himself written, and where he signed the will in their presence, and they signed the attestation in his presence, and the presence of each other, the will was properly attested, though no words passed between the witnesses and testator.—Thomas v. English, Mo., 167 S. W. 1147.

85.——Construction.—Where specific things are enumerated in a will, and a more general description is coupled with the enumeration, the general description is commonly understood to cover only things of like kind with those specifically enumerated.—Crosby v. Cornforth, Me., 90 Atl. 981.

86.——Construction.—Where testator gave to his wife for life the rent from his farm subject to a payment to a third person and empowered the executor to convert any property of the testator and pay out of any money in his hands to the wife such sums as might be needed, more than her share of the rent from the farm, for her support, with gift over on her death, the wife was entitled to all of the rent, minus the sum required to be paid to the third person.—In re Hemphill's Estate, Wis., 147 N. W. 1089.

87.——Delusions.—Delusions, which in no manner influenced testatrix in the making of her will, cannot serve to defeat it.—In re Baker's Will, N. J., 90 Atl. 1009.

88.—Mutual Will.—An instrument executed by a husband and wife, by which each purported to give all his or her interest in community property to the other, effective after his or her death, with remainder over after the survivor's death to the heirs of both testators, held a mutual will and the separate will of the survivor.—Anderson v. Hande, Ariz., 141 Pac. 723.

89.——Nuncupative.—The statute relative to a nuncupative will does not contemplate that a person who has been sick for a long time cannot, on her illness reaching a critical turn, make a nuncupative will, merely because prior thereto, if her attention had been called to the making of a will, she would have had opportunity to reduce it to writing.—Harp v. Adams, Ga., 82 S. E. 246.

90.——Revocation.—Where an original will was revoked by the execution of another, the subsequent destruction of the latter did not revive the original, unless the terms of the revocation showed that it was testator's intention so to do, or unless after such destruction the first will was republished, under Decedent Estate Law, § 41.—In re Kuntz's Will, 148 N. Y. Supp. 382.